

J. Melody



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** The Gerard Company

**File:** B-242976

**Date:** February 27, 1991

Sam Zalman Gdanski, Esq., for the protester.  
John M. Melody, Esq., Office of General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Protest is dismissed for failure to state a basis of protest where the facts presented do not support protester's arguments that awardee's low offer was due to unbalancing or to misinterpretation of requirements.

### DECISION

The Gerard Company protests the award of a contract to Staples-Hutchinson Associates, Inc. under solicitation No. GS-OOP-90-BQ-0034, issued by the General Services Administration (GSA) for photographic services.

We dismiss the protest.

Gerard's protest is based on its belief that the awardee's offered price is so low that it evidences unbalanced bidding or a solicitation ambiguity such that offerors were not competing based on the same interpretation of the solicitation.

Our Bid Protest Regulations contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Professional Medical Prods., Inc., B-231743, July 1, 1988, 88-2 CPD ¶ 2. Gerard has not met this standard. First, while Gerard alleged unbalanced bidding, it does not specify any specific prices it believes are unbalanced. The protester does cite prices for certain work which it considers too low (in comparison to its own prices), but in order to establish possible material unbalancing, the protester must present evidence that the bid in question contains both understated and overstated prices. OMSERV Corp., B-237691, Mar. 13, 1990, 90-1 CPD ¶ 271.

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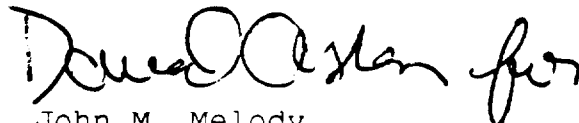
Similarly, aside from a general argument to the effect that the solicitation contains a latent ambiguity that led the awardee to price its offer below Gerard's, Gerard points to nothing in the solicitation that would constitute a latent ambiguity. Rather, Gerard speculates as to the way in which the awardee calculated its prices and, based on this speculation, concludes that the awardee was proceeding under a misinterpretation of the solicitation. Such speculation is not a valid basis for protest. See Charl Indus. Inc.-- Recon., B-236928.2, Feb. 6, 1990, 90-1 CPD ¶ 155.

Gerard cites our decision in Baytex Marine Communication, Inc., B-237183, Feb. 8, 1990, 90-1 CPD ¶ 164, in support of its argument. There, we held that the agency should have held discussions to assure offerors were competing on an equal basis where the awardee's price for one of the evaluated items was only 1/40 of other offerors' prices; this evidenced a materially different interpretation of the requirements such that offerors were not competing on an equal basis. Gerard has presented no facts indicating that the situation here is similar to that in Baytex. It states the awardee's total price as \$2,202,279.40, but does not indicate its own price for comparison, and has presented no other clear evidence that the awardee interpreted the solicitation differently than Gerard. The protester certainly has presented no evidence approaching the 40-fold price difference that led to our conclusion in Baytex.

Gerard does specifically argue that its experience as the incumbent contractor indicates that the workload estimates for some of the contract tasks are understated, but this argument is untimely; protests of alleged solicitation improprieties must be filed prior to the deadline for receipt of offers. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990).

Finally, Gerard argues that Staples-Hutchinson does not possess the requisite financial capabilities to perform the contract. This is a challenge to the contracting officer's affirmative determination of the awardee's responsibility, a matter within the agency's discretion that we will not review under the circumstances here. 4 C.F.R. § 21.3(m)(5).

The protest is dismissed.



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